UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

BLOWFISH, LLC, Plaintiff, v. G.A. RESTAURANT, INC., d/b/a "BLOWFISH RESTAURANT," STAVROULA FOTOPOULOS, and GEORGE KAMBERIDES, Defendants.	Case No.: **COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF** **DEMAND FOR JURY TRIAL**

Plaintiff, BLOWFISH, LLC ("Plaintiff'), by and through counsel, hereby complains and alleges against Defendant, G.A. RESTAURANT, INC., d/b/a BLOWFISH RESTAURANT, STAVROULA FOTOPOULOS, and GEORGE KAMBERIDES (hereinafter, collectively "Defendant"), as follows:

I. NATURE OF ACTION

1. This is an action brought under Federal Statutes and State common law and statutes alleging the following: (1) Infringement of Federally Registered Trademarks Under 15 U.S.C. § 1114(1); (2) Unfair Competition Under 15 U.S.C. § 1125(a); (3) Dilution Under 15 U.S.C. § 1125(c); (4) Trademark Infringement under Massachusetts common law; (5) Unfair and Deceptive Trade Practices under Massachusetts General Laws Chapter 93A. Plaintiff seeks damages, attorney's fees, costs and preliminary and permanent injunctive relief.

II. JURISDICTION

2. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338(a) as it arises under Acts of Congress related to trademarks. This Court has related claim jurisdiction over the state law claims pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (c) because Plaintiff's claims arise out of conduct that took place in Massachusetts and Defendants reside in this district for venue purposes.

III. PARTIES

5. Plaintiff, BLOWFISH, LLC, is a limited liability company existing under the laws of California.

6. Defendant, G.A. RESTAURANT, INC., d/b/a "BLOWFISH RESTAURANT," is a corporation organized and incorporated under the laws of the Commonwealth of Massachusetts. The corporation owns, operates, and conducts business as "BLOWFISH RESTAURANT," located at the corporation's principal office and principal place of business: 4025 Washington Street, Roslindale, MA 02131.

7. Defendant, STAVROULA FOTOPOULOS, is the president, treasurer, secretary, and director of G.A. RESTAURANT, INC., and resides at 7 Lorraine Street, Roslindale, MA 02131.

8. Defendant, GEORGE KAMBERIDES, is the registered agent of G.A. RESTAURANT, INC., and resides at 7 Lorraine Street, Roslindale, MA 02131.

IV. ALLEGATIONS TO COMMON TO ALL CLAIMS

8. Plaintiff is the owner of several restaurants operating under the names Blowfish Sushi and Blowfish Sushi to Die For in California. Currently, Plaintiff operates two (2) Blowfish Sushi restaurants, in San Jose and San Francisco, and is in the process of opening a third restaurant in Los Angeles, California.

9. Plaintiff owns the United States Federal Trademarks Registration Nos. 2231121 (filed November 25, 1996, registered March 9, 1999) and 2734689 (filed March 12, 2001, registered July 8, 2003) for the Blowfish® (the "Mark") and Blowfish Sushi to Die For ® trademarks (collectively the "Marks") in connection with its restaurants.

10. Plaintiff has made extensive use of the Marks on signage and promotional materials, in both print and on the internet. Its Mark has a consistently high page rank on the Google search engine, which means Plaintiff's website appears first when a user searches for the terms "blowfish" or "blowfish sushi." Plaintiff has spent thousands of dollars promoting its restaurants and the brand name in an effort to associate the "Blowfish Sushi" mark with a unique dining experience, including the architecture of its restaurants and its menu.

11. In or around 2008, Defendant opened and has subsequently continued to operate a

restaurant under the name "Blowfish Restaurant" in Roslindale, Massachusetts. (See Exhibit "A").

12. On or about November 17, 2009, Plaintiff sent Defendant a letter requesting that Defendant cease and desist all use of the "Blowfish" name and/or Plaintiff's Marks or confusingly similar variations thereof. (See Exhibit "B").

13. Defendant did not respond to the letter and has continued to use the "Blowfish" name in connection with its restaurant and related services.

14. By operating a restaurant using Plaintiff's Mark, Defendant was and is attempting to trade on the good will of Plaintiff.

15. By operating a restaurant using Plaintiff's Mark, Defendant was and is attempting to create an association between its restaurant and Plaintiff.

16. Plaintiff's Mark at issue in this case was distinctive at the time Defendant opened the "Blowfish Restaurant."

FIRST CLAIM FOR RELIEF

Infringement of Federally Registered Trademarks (15 U.S.C. § 1114(1))

17. Plaintiff incorporates the allegations in paragraphs 1 through 16 as if fully set forth herein.

18. Plaintiff owns the United States Federal Trademarks Registration Nos. 2231121 (filed November 25, 1996, registered March 9, 1999) and 2734689 (filed March 12, 2001, registered July 8, 2003) for the Blowfish® and Blowfish Sushi to Die For ® trademarks in connection with its restaurants.

19. Defendant has used in commerce Plaintiff's Mark in connection with the advertising and operation of a restaurant.

20. Defendant's use of Plaintiff's Mark within the name of its restaurant and related services will likely cause confusion or mistake, or will likely deceive the public as to Defendant's food products and restaurant as being associated or identified with or being the same as those of Plaintiff.

21. Defendant's use of Plaintiff's Mark within the name of its restaurant and related services is intended to cause confusion or mistake, and/or to deceive the public as to Defendant's food products and restaurant as being associated or identified with or being the same as those of Plaintiff.

22. Plaintiff did not consent to or authorize Defendant's adoption or commercial use of Plaintiff's Mark.

23. Defendant, therefore, has infringed Plaintiff's Marks in violation of its federal trademark rights under the Lanham Act, 15 U.S.C. §§ 1051 et seq., particularly 15 U.S.C § 1114(1).

24. Plaintiff's Marks are strong in light of its marketing and promotion, and sales volume under its Mark.

25. Defendant's use of the Mark has been with knowledge of Plaintiff's prior rights to the federally registered trademarks listed above and, therefore, constitutes willful infringement.

26. Plaintiff has no control over the composition or quality of the food products sold under the confusingly similar name. As a result, Plaintiffs valuable goodwill, developed at great expense and effort, is being harmed by Defendant's unauthorized use of the confusingly similar name, and is at risk of further damage.

27. As a direct and proximate result of Defendant's infringement of Plaintiff's Marks, Plaintiff has suffered and will continue to suffer, monetary damages, and irreparable injury to its business, reputation and good will.

28. Defendant's infringement will continue unless enjoined.

29. Plaintiff has been required to retain the assistance of counsel and is entitled to compensation for the attorneys' fees and costs incurred in the prosecution of this action.

SECOND CLAIM FOR RELIEF

Unfair Competition Under the Lanham Act, 15 U.S.C. § 1125(a)

30. Plaintiff incorporates the allegations in paragraphs 1 through 29 as if fully set forth herein.

31. Defendant's use in commerce of a mark identical and/or confusingly similar to Plaintiff's Marks in connection with Defendant's services a false designation of origin and/or a false or misleading description or representation of fact, which is likely to cause confusion, cause mistakes, or deceive as to affiliation, connection or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's services or commercial activities by Plaintiff.

32. Defendant's use in commerce of Plaintiff's Mark and/or marks confusingly similar to

Plaintiff's Marks with the knowledge that Plaintiff owns and has used, and continues to use, its Mark constitutes an intentional conduct by Defendant to make false designations of origin and false descriptions about Defendant's services and commercial activities.

33. As a direct and proximate result of such unfair competition, Plaintiff has suffered, and will continue to suffer, monetary loss and irreparable injury to his business, reputation, and good will.

34. Plaintiff has been required to retain the assistance of counsel and is entitled to compensation for the attorneys' fees and costs incurred in the prosecution of this action.

THIRD CLAIM FOR RELIEF

Dilution Under the Lanham Act, 15 U.S.C. § 1125(c)

35. Plaintiff incorporates the allegations in paragraphs 1 through 34 as if fully set forth herein.

36. Plaintiff's Marks have become distinct through continuous use of the name and Marks in connection with its products and services.

37. Plaintiff's Marks have gained a reputation as a distinctive indication of origin and quality of Plaintiff's products and services.

38. Defendant has used and continue to use in commerce the confusingly similar “Blowfish Restaurant” name in connection with the operation of its restaurant.

39. Defendant's use of the “Blowfish Restaurant” name in connection with advertising and marketing of its services and goodwill continue to cause injury to and dilution of the distinctive quality of Plaintiff's Marks in violation of Plaintiffs rights under 15 U.S.C. 1125(c).

40. Defendant has engaged in these actions willfully, recklessly, wantonly, and unlawfully and with the intent to dilute Plaintiff's Marks, and with the intent to trade on Plaintiff's goodwill and reputation.

41. Plaintiff has been required to retain the assistance of counsel and is entitled to compensation for the attorneys' fees and costs incurred in the prosecution of this action.

FOURTH CLAIM FOR RELIEF

Common Law State Trademark Infringement

42. Plaintiff repeats and hereby incorporates by reference, as though specifically pleaded

herein, the allegations of paragraphs 1 through 41.

43. Defendants' acts complained of herein constitute trademark infringement under the common law of the Commonwealth of Massachusetts.

44. Defendants' conduct as alleged above has damaged and will continue to damage Plaintiff's goodwill and reputation and has resulted in loss of revenue to Plaintiff in an amount to be determined at trial.

45. Defendants' conduct complained of herein constitutes malice, oppression and/or fraud thus entitling Plaintiff to recover punitive damages.

FIFTH CLAIM FOR RELIEF

Unfair and Deceptive Trade Practices Under M.G.L. c. 93A, §§ 2 and 11

46. Plaintiff repeats and hereby incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 45.

47. On November 17, 2009, Plaintiff, through its counsel, sent Defendant a written cease and desist letter, identifying and reasonably describing its unfair or deceptive acts and/or practices. (See Exhibit "B").

48. As of this date, Defendant failed and/or refused to respond to Plaintiff's November 17, 2009 letter.

49. As of this date, Defendant has further failed and/or refused to cease its use of the Plaintiff's Mark.

50. Defendant's continued unlawful use of the Mark constitutes unfair methods of competition and unfair and deceptive acts and practices in violation of Massachusetts law.

51. Defendant's unlawful use of the Mark occurred primarily and substantially within the Commonwealth.

52. Such conduct on Defendant's part has caused and will continue to cause damages to Plaintiff.

WHEREFORE, Plaintiff respectfully prays for relief as follows:

1. A preliminary and permanent injunction prohibiting Defendant from:

(a) Using Plaintiff's federally registered Marks, or confusingly similar variations thereof; alone or in combination with any other letters, words, letter strings, phrases or designs, in commerce or in connection with any business for any other purpose, (including, but not limited to, on Websites and in domain names);

(b) Registering, owning, leasing, selling or trafficking any domain names containing Plaintiff's registered trademarks or confusingly similar variations thereof, alone or in combination with any other letters, words or designs.

2. An award of compensatory, consequential, statutory, and punitive damages to Plaintiff in an amount to be determined at trial.

3. An award of interest, costs and attorney's fees incurred by Plaintiff in prosecuting this action; and

4. All other relief to which Plaintiff is entitled.

Respectfully submitted,
By the Plaintiff,
Blowfish, LLC,
By its attorneys,

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Dated: August 20, 2010